

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

SERVICE EMPLOYEES INTERNATIONAL, INC.	§	
&	§	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,	§	S.D. Tex. No. _____
 PETITIONERS	§	
 VS.	§	
 DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS	§	<i>On appeal from the United States Department of Labor, Benefits Review Board, BRB NOS. 08-0583, 10-0576</i>
&	§	<i>&amp; 10-0576A</i>
KENNETH SIMONS,	§	<i>OALJ No. 2007-LDA-00237, OWCP No. 02-135327</i>
 RESPONDENTS	§	

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NOTICE OF APPEAL ON BEHALF OF EMPLOYER, SERVICE EMPLOYEES  
INTERNATIONAL, INC., AND CARRIER, INSURANCE COMPANY OF THE STATE  
OF PENNSYLVANIA, PETITIONERS

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TO THE HONORABLE JUDGE:

**Please take Notice that** pursuant to the Longshore and Harbor Workers' Compensation Act, the Defense Base Act, and regulations corresponding thereto, Employer, Service Employees International, Inc., and Carrier, Insurance Company of the State of Pennsylvania (collectively, "Petitioners"), file this Notice of Appeal and would state as follows:

- (1) Employer and Carrier are Petitioners herein. Petitioners' address is 600 North Pearl St., Suite 700, Dallas, Texas 75201. Petitioners are represented by undersigned counsel.

(2) Claimant, Kenneth Simons, is Respondent. Respondent is represented by Ed W. Barton, 701 W. Park Avenue, P.O. Box 488, Orange, TX 77631 and Joshua T. Gillelan II, Longshore Claimants' National Law Center, Georgetown Place, Ste. 500, 1101 30<sup>th</sup> St., N.W., Washington, DC 20007.

(3) The Director of the United States Department of Labor, Office of Workers' Compensation Programs, Eighth Compensation District, is Bradley T. Soshea. Director Soshea's address is Mickey Leland Federal Building, 1919 Smith St., Ste. 870, Houston, TX 77002.

(4) Kenneth Simons originally filed his timely appeal of the Administrative Law Judge's 17 April 2008 *Decision and Order*<sup>1</sup> on 1 May 2008. The Benefits Review Board reversed and remanded the Administrative Law Judge's *Decision and Order* on 13 March 2009.<sup>2</sup> Employer and Carrier filed a timely Motion to Reconsider which was denied on 25 September 2009.<sup>3</sup>

After remand to the Administrative Law Judge, a second *Decision and Order* was issued by ALJ Kennington on 18 May 2010.<sup>4</sup> Both parties filed timely Motions for Reconsideration, and ALJ Kennington denied both Motions for Reconsideration in his 22 June 2010 *Decision and Order Denying Claimant and Employer's Motions for Reconsideration*.<sup>5</sup> Employer and Carrier filed their timely appeal of the 22 June 2010 *Decision and Order Denying Claimant and Employer's Motions for Reconsideration* on 30 June 2010. Kenneth Simons filed

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<sup>1</sup> Attached as Exhibit A.

<sup>2</sup> Attached as Exhibit B.

<sup>3</sup> Attached as Exhibit C.

<sup>4</sup> Attached as Exhibit D.

<sup>5</sup> Attached as Exhibit E.

his cross-appeal on 13 July 2010. On 26 January 2011, the Benefits Review Board affirmed the 22 June 2010 *Decision and Order Denying Claimant's and Employer's Motions for Reconsideration*.<sup>6</sup>

- (5) Petitioners appeal the following decisions in the instant case:
  - *Decision and Order* of Benefits Review Board, dated 13 March 2009;
  - *Order on Reconsideration En Banc* of Benefits Review Board, dated 25 September 2009;
  - *Decision and Order on Remand* of Administrative Law Judge, dated 18 May 2010;
  - *Decision and Order Denying Claimant and Employer's Motions for Reconsideration* of Administrative Law Judge, dated 22 June 2010; and
  - *Decision and Order* of Benefits Review Board, dated 26 January 2011.
- (6) This Petition is timely filed pursuant to 33 U.S.C. § 921(c) as it is filed within sixty (60) days of the *Decision and Order* of the Benefits Review Board. *See also* 20 C.F.R. § 802.410(a).
- (7) This Court has jurisdiction over this claim, as the original Decision and Order of the Administrative Law Judge was filed in, and served on the parties by, the Office of the District Director, Eighth Compensation District, Houston, Texas. 42 U.S.C. § 1653(b). *See also Eysselinck v. Director, Office of Workers' Compensation Programs*, No. H-07-4589, 2009 WL 677137 (S.D. Tex. March 11, 2009); *AFIA/CIGNA World Wide v. Felkner*, 930 F.2d 1111, 1116 (5th Cir. 1991).
- (8) There are no pending Motions for Reconsideration with the Benefits Review Board.

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<sup>6</sup> Attached as Exhibit F.

Petitioners respectfully request that this Honorable Court issue a briefing schedule so that Petitioners may more fully outline the basis for this appeal.

Respectfully submitted,

**LEGGE, FARROW, KIMMITT, MCGRATH & BROWN, L.L.P.**

/s/Jerry R. McKenney

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**ATTORNEYS IN CHARGE FOR PETITIONERS  
EMPLOYER AND CARRIER**

**CERTIFICATE OF SERVICE**

A true and correct copy of this document was served on this 22<sup>nd</sup> day of March 2011 on counsel listed below:

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Honorable Clement Kennington  
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